"Market value" has been defined in various cases as the price a willing purchaser is prepared to pay a willing seller for the property in open market.

Section 61 of the Land Code (omitting the immaterial words) provides as follows:—

"In determining the amount of compensation to be awarded for land resumed under this part, the court shall not take into consideration —

(e) any increase in the value of the land resumed likely to accrue from the use to which it will be put when resumed."

In assessing the market value the effect of any express or implied condition of title restricting the use to which the land may be put has to be taken into account.

We have therefore to consider, having regard to the evidence what is the fair sum to award to the claimant in respect of this land.

It is undoubtedly true that in awarding compensation any and every element of value which the lands possess to the owner must be taken into consideration in so far as it increases the value to him. In other words, not the land alone, but the land with all its potentialities must be considered in assessing the value.

Mr. Searcy has to ascertain the value to the land owner as best he can and we think it quite fair for him to do what has been done in the present case.

We would refer to *Superintendent of Lands and Surveys, Sarawak* v. *Aik Hoe & Co. Ltd.* at p. 247 which established that the onus of showing that the award was inadequate lay upon the owner. In our opinion it has been satisfactorily established.

With the above general remarks we ought perhaps to refer to *Aik Hoe & Co. Ltd.* v. *Superintendent of Lands and Surveys, First Division* [5] where the Privy Council quoted with approval at page 60 the following passage in the judgment of Suffian J., as he then was:—

"He refers there to the omission of the High Court to consider the effect on the market price a willing purchaser might be prepared to pay of the risk of refusal or delay of sub-division permission, of the risk that the lands might never be required for industrial and building purposes for a considerable time, and the necessity for the prospective purchaser making allowance for interest and development costs over an uncertain period."

In such an enquiry relating to subjects abounding with uncertainties, there is more than ordinary room for guess work and it would be very unfair to require an exact exposition of reasons for the conclusions arrived at, as valuation can never be a strictly mathematical process.

Upon the point of compensation we regret that we are unable to concur in so far as regards the amount the figure assessed. Mr. Searcy has assessed the value of the land at $41,000 while in our opinion the value should be the higher sum of $60,000.

Taking the evidence as a whole and making all due allowances, we vary the award of the Government valuer and allow compensation to the applicant at $60,000 which we consider fair and reasonable with interest at 4% on the excess.

The amount awarded by the court exceeds the sum awarded by the superintendent but here the claim of the applicant is to our minds quite excessive and the court orders that the applicant pay its own costs and half the costs of the superintendent.

Chieng Hie Kwong and **Lee Swee Ling, Assessors,** concurred.

Order accordingly.

KESATUAN PEKERJA2 KENDERAAN JAYA v. INDUSTRIAL COURT & ORS.

[O.C.J. (Abdul Aziz J.) March 11, 1969]

[K.L. — Originating Motion No. 15 of 1968]

Industrial Law — Trade union — Recognition by employer — Discretion of Minister to refer matter to court — Jurisdiction of the Industrial Court — Application for prohibition to stay proceedings — Order of prohibition — Industrial Relations Act, 1967, ss. 8 and 10.

Administrative Law — Prohibition — Application for — Stay of proceedings — Industrial court.

The applicant sought for an order of prohibition to stay proceedings in the Industrial Court on the ground that court lacked or was acting in excess of its jurisdiction. The facts were that the employer company had by letter recognised the applicant trade union as representing the workers of the company. Subsequently a rival trade union claimed to represent the workers and subsequently the Minister referred the dispute to the Industrial Court. The applicant contended that as recognition had been accorded to them by the employer, the Industrial Court had no jurisdiction to determine the question of recognition.

Held: (1) the Industrial Court is subject to the controlling jurisdiction of the High Court;

(2) section 10 of the Industrial Relations Act could only mean that where recognition has been accorded to a trade union as representing workmen either by the court or by the employer, no other trade union shall make a claim to the employer under section 8 of the Act for recognition in respect of the same workmen or class of workmen within a period of two years;

(3) the Minister's discretion to refer a matter to the Industrial Court is however unfettered by section 10 of the Industrial Relations Act and as in this case, reference has properly been made, the Industrial Court obtained jurisdiction and the jurisdiction was not vitiated or diminished by the initial lack of *locus standi* of the claimant when he made the claim.

MOTION.

S. Woodhull for the applicant.

Mrs. Ng Mann Sau (Federal Counsel) for the Industrial Court (1st respondent).

Ng Mann Cheong for the Sri Jaya Tranport Co. Ltd. (2nd respondent).

A.R. Rajasingam for the Kesatuan Pekerja2 Pengangkutan (3rd respondent).

Cur. Adv. Vult.

Abdul Aziz J.: This is an application by way of motion for rule absolute requesting that this court do "grant an order of prohibition to stay proceedings in the first respondent court (Industrial Court) in respect of Case No: 5 of 1968" on the ground that the Industrial Court lacked or was acting in excess of its jurisdiction.

The affidavits show that the dispute referred to the Industrial Court under section 8(4) of the Industrial Relations Act 1967 concerned two rival trade unions, the Kesatuan Pekerja2 Kenderaan Sri Jaya (KPKSJ) and the Kesatuan Pekerja2 Pengangkutan (KPP) both claiming to represent the employees of the Sri Jaya Transport Company and both seeking recognition by the company. For the purposes of proceedings, which apparently was initiated by KPP, KPKSJ was ordered to be joined as a party under section 9(2).

The relevant portions of the interim award could be summarised as follows:—

(a) That the Ministry of Labour be invited to conduct a secret ballot amongst the workers of the company to determine which of the two unions should represent them in relation to wages and other conditions of services;

(b) If the greater number of votes in the ballot is in favour of KPP, the company would accord that union general recognition and grant to KPKSJ limited recognition;

(c) If the greater number of votes in the ballot is in favour of KPKSJ, then general recognition be accorded to that union, and KPP be accorded limited recognition;

(d) That the parties be at liberty to make representations in relation to the conduct of the ballot.

A secret ballot was accordingly conducted and the ballot was found to be in favour of KPP. The KPKSJ filed an objection as to the conduct of the ballot, but later withdrew the objection and subsequently filed this motion for order of prohibition.

The applicant's case is that by reason of section 10 the Industrial Court lacked jurisdiction in hearing the case and making the award. Section 10 reads:—

"Where a trade union has been accorded recognition in respect of any workman or class of workmen by a decision of the court *or otherwise* no other trade union shall make any claim for recognition in respect of the same workman or class of workmen unless a period of two years has elapsed after such recognition has been accorded or the trade union which has accorded recognition is no longer in existence."

Applicant claims — and this has not been disputed — that some time in February 1968 the company by letter recognised KPKSJ as representing a larger number of workers than KPP and accordingly agreed to recognise KPKSJ as representing the workers of the company. It is agreed that, since under section 10 recognition could be accorded otherwise than by the court. e.g. by the employer, the Industrial Court has no further jurisdiction to determine the question of recognition.

I do not propose to deal, in extenso, with the innumerable cases dealing with the principles governing the issue on orders of prohibition. Suffice for me to quote a passage from *Halsbury's* Laws of England, 3rd Edn., Volume 11 at page 55:—

"Prohibition will lie to bodies and persons other than courts *stricto sensu*. Any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, is subject to the controlling jurisdiction of the High Court of Justice."

It has not been disputed that the Industrial Court is subject to the controlling jurisdiction of the High Court although I would not call it an inferior court. It is in constitution, power and scope a superior court, but with limited jurisdiction. Its decision is not subject to appeal or review. [Section 29(3)(a)]. In making its award, the Industrial Court may, in contrast to ordinary courts, have regard to public interest, the financial implications and the effect of such award on the economy of the country, and on the industry concerned, and also to the probable effect in related or similar industries. [Section 27(4)]. It shall also act in accordance with equity, good conscience and the substantial merits of the case without regard to technicalities and legal form. [Section 27(5)].

Halsbury's Laws of England, 3rd Edn., Volume 11 at page 119 also states:—

"The right to apply for prohibition remains as long as there is something left to be done by or under the authority of the court which can be effectively prohibited."

Also:—

"Prohibition will not lie for an error of law unless there is an excess of jurisdiction".

The records pertaining to Case No. 5 of 1968 are not before me. The only record of the case I have is a copy of the interim award and on this alone I am asked to say that there is something left to be done and to make the

order of prohibition to stay proceedings in respect of Case No. 5 of 1968. There is nothing in the affidavit to show what else the Industrial Court has to do to perfect the order. The term "interim award" may perhaps be misleading. The so-called interim award is, in fact, a final award. It becomes final and conclusive and binding on the company as soon as the result of the secret ballot is announced.

I shall deal briefly with the question of jurisdiction. Recognition of a trade union is governed by Part III of the Industrial Relations Act. Under section 8, claim for recognition shall be made to the employer. If the employer grants recognition, there the matter ends. If he does not or for *any* reason refuses to grant recognition, the trade union may report the matter to the Minister and the Minister may either take steps to resolve it, or, he may refer it to the Industrial Court for a decision. If he makes a reference, a jurisdiction is conferred on the Industrial Court to deal with the subject of recognition. Manifestly, the Industrial Court cannot of its own volition entertain any direct claim for recognition. Under section 9, the court may when deciding the question join other competing trade unions as parties to the proceedings.

There is no dispute that the claim for recognition as in Case No. 5 of 1968 was referred by the Minister to and, consequently, jurisdiction was conferred on the Industrial Court to adjudicate. Having regard to the whole tenor of the Act, section 10 could only mean that where recognition has been accorded to any class of workmen either by the court or otherwise (namely, by the employer) no other trade union shall make a claim *to the employer* under section 8 for recognition in respect of the same workmen or class of workmen within a period of two years. A refusal by the company to grant the claim on ground of this limitation may, perhaps, be a ground for a request to the Minister for reference. The Minister's discretion seems to be unfettered by section 10. Once a reference is properly made, the Industrial Court obtains jurisdiction and the jurisdiction is not, in my view, vitiated or diminished by the initial lack of *locus standi* of the claimant when he makes the claim.

Accordingly, the motion will be refused with costs

Application dismissed.

Solicitors: *Shearn, Delamore & Co.; Shook Lin & Bok; R. Rajasingam & Co.*

YAP HONG THIN & ANOR. v. SEENEVESAM

[O.C.J. (Pawan Ahmad J.) March 14, 1969]

[Ipoh — Originating Motion No. 3 of 1968]

Landord and Tenant — Recovery of possession of premises — Whether application may be made by origiting motion — R.S.C. 1957, O. 52 r. 1 — Control of Rent Act, 1966, s. 16(1).

Practice and Procedure — Application by originating motion for recovery of possession of premises — Question of fact — Whether proper.

This was an application by originating motion for the recovery of possession of premises occupied by the respondent. The respondent raised a preliminary objection that the application by originating motion was irregular.

Held: an application for recovery of possession of premises by originating motion is not irregular, but the questions of fact in this case can only be determined by the examination and cross-examination of witnesses in open court and therefore the application was not suitable or proper and must be dismissed with costs.

Cases referred to:—

(1) *Re Meister Lucius & Bruning, Ltd.* (1914), W.N. 390.

(2) *E'Singam* v. *Dr. Sundram & Ors.* [1960] M.L.J. 91.

(3) *Ong Yok Chu & Anor.* v. *Yong Teck Fong & Anor.* [1960] M.L.J. 292.

ORIGINATING MOTION.

N. Sharma for the applicants.

Dato' S.P. Seenivasagam for the respondent.

Cur. Adv. Vult.

Pawan Ahmad J.: This is an application by originating motion for the recovery of possession of premises occupied by the respondent on the ground that the respondent has been in arrears in the payment of rent lawfully due for a period of more than 14 days. The 1st applicant's affidavit in support of the motion states that the premises were let out to the respondent at a monthly rental of $112 payable in advance on the first day of each month of tenancy on the terms and conditions set out at the back of the receipt. The relevant terms and conditions of tenancy are contained in clause 2 and clause 6. Clause 2 reads:—

"The tenancy is a month to month tenancy. All rents shall be due on the 1st day of the month and shall be paid in advance without demand."

and clause 6 reads:—

"Any breach of the above terms and conditions by the tenant, shall render the tenancy to be terminated by the landlords upon giving one month's notice."

The 1st applicant also states that the respondent has been served with a month's notice terminating the tenancy on 31st October, 1967 because the respondent has been in arrears in the payment of rent for a period of more than 14 days.